Singapore Salvage Engineers Pte Ltd v Nagalingam a/l Kalimuthu

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO JA-22NCVC-46–03 OF 2020
SEE MEE CHUN J
11 MARCH 2021

Contract — Agreement — Misrepresentation — Plaintiff alleged that the defendant committed misrepresentation to plaintiff — Whether there was shares held by defendant in SSE Marine Sdn Bhd — Whether there was a representation from defendant to purchase, convert and then sold to plaintiff such that plaintiff paid for on basis of that representation — Whether purchase funds came from plaintiff

Civil Procedure — Striking out — Application for — Application to strike out plaintiff's claim — Defendant applied to strike out plaintiff claim as triable issues were afterthought — Whether striking out application should be allowed — Rules of Court 2012 O 18 r 19

The plaintiff had filed a claim against the defendant for the payment of RM7,063,376 and a declaration that 600 shares in a company SSE Marine Sdn Bhd was held by the defendant as a trustee. The amount claimed consists of payments made to the defendant of RM3,526,712 for the purchase of a piece of land, Lot 142 and RM3,536,664 for Lot 143 as well as consultation fees. According to the plaintiff, there was misrepresentation and breach of contract when the defendant represented to the plaintiff that Lots 142 and 143 were suitable for use as a shipyard and had to be a converted and rezoned from agricultural land to industrial land. The lands were to be purchased by the defendant first who would undertake the conversion exercise and then sold it to the plaintiff. The issues raised by the plaintiff were: (a) whether the shares held by the defendant in SSE Marine Sdn Bhd; (b) whether there was a representation from the defendant to purchase, convert and then sold to the plaintiff such that the plaintiff paid for Lots 142 and 143 on the basis of that representation; and (c) whether the purchase funds came from the plaintiff. The defendant on the other hand, applied to strike out the plaintiff's claims in encl 15 and stated that the plaintiff's affidavit were denials and in contradiction of the facts and that the triable issues were an afterthought.

Held, dismissing plaintiff's claim and allowing defendant's application to strike out plaintiff's claim:

(1) SSE Marine Sdn Bhd and the plaintiff were different entities such that the plaintiff had no locus to seek such a declaration. In any event, there was evidence to show that the defendant had purchased the shares. There was a letter of consent from the defendant to take up the shares and a director's resolution to confirm the shares allotted to the defendant (see paras 21–23).

(2) The court was of the opinion that there was no representation made on the basis of the sale and purchase agreement for Lots 142 and 143. For Lot 143, the transaction between parties were not the defendant as there was a company resolution authorising the purchase. There was no proof the company, SSE Marine Sdn Bhd was the plaintiff's related company. For Lot 142, there was no agreement between the plaintiff and the defendant for the defendant to resell after conversion. It was just an option to purchase and there was never any term for the defendant to rezone or convert the land (see paras 24–25 & 28).

(3) It was found that it was SSE Marine Sdn Bhd that purchased Lot 143 and there was no evidence of payment for Lot 142 despite it was pleaded (see para 30).

(4) As the court found that there was no triable issues raised by the plaintiff, it was a plain and obvious case whereby striking out pursuant to O 18 r 19 of the Rules of Court 2012 was warranted (see para 32).

[Bahasa Malaysia summary

Plaintif telah memfailkan tuntutan terhadap defendan untuk pembayaran sebanyak RM7,063,376 dan satu deklarasi bahawa 600 saham dalam syarikat SSE Marine Sdn Bhd dipegang oleh defendan sebagai pemegang amanah. Jumlah yang dituntut termasuklah pembayaran yang dibuat kepada defendan sebanyak RM3,526,712 untuk pembelian sekeping tanah, Lot 142 dan RM3,536,664 untuk Lot 143 serta fi perundingan. Menurut plaintif, terdapat salah nyata dan pelanggaran perjanjian apabila defendan memberikan representasi kepada plaintif bahawa Lot 142 dan Lot 143 sesuai untuk digunakan sebagai limbungan kapal dan harus ditukar dan dizon semula dari tanah pertanian ke tanah industri. Tanah tersebut harus dibeli oleh defendan terlebih dahulu yang beraku janji akan melakukan penukaran dan kemudian menjualnya kepada plaintif. Isu yang dibangkitkan oleh plaintif adalah: (a) sama ada saham yang dimiliki oleh defendan dalam SSE Marine Sdn Bhd; (b) sama ada terdapat representasi dari defendan untuk membeli, menukar dan kemudian menjual kepada plaintif sehingga plaintif membayar Lot 142 dan Lot 143 berdasarkan representasi tersebut; dan (c) sama ada dana pembelian adalah dari plaintif. Sebaliknya, defendan memohon untuk membatalkan tuntutan plaintif dalam lampiran 15 dan menyatakan bahawa afidavit plaintif adalah penafian dan bertentangan dengan fakta dan bahawa isu-isu yang dibicarakan adalah suatu pemikiran semula.

Diputuskan, menolak tuntutan plaintif dan membenarkan permohonan defendan untuk membatalkan tuntutan plaintif:

(1) SSE Marine Sdn Bhd dan plaintif adalah entiti yang berbeza oleh itu plaintif tidak mempunyai locus untuk memohon deklarasi tersebut. Bagaimanapun, terdapat keterangan yang menunjukkan bahawa defendan telah membeli saham tersebut. Terdapat surat persetujuan dari defendan untuk memebeli saham dan resolusi pengarah untuk mengesahkan peruntukan saham kepada defendan (lihat perenggan 21–23).

(2) Mahkamah berpendapat bahawa tidak ada representasi yang dibuat berdasarkan perjanjian jual beli untuk Lot 142 dan Lot 143. Untuk Lot 143, transaksi antara pihak bukanlah defendan kerana terdapat resolusi syarikat yang membenarkan pembelian tersebut. Tidak ada keterangan syarikat tersebut, SSE Marine Sdn Bhd adalah syarikat yang berkait dengan plaintif. Untuk Lot 142, tidak ada perjanjian antara plaintif dan defendan untuk defendan menjual kembali setelah penukaran. Ia hanyalah pilihan untuk membeli dan tidak pernah ada terma bagi defendan untuk zon semula atau menukar tanah tersebut (lihat perenggan 24–25 & 28).

(3) Ianya telah didapati bahawa SSE Marine Sdn Bhd telah membeli Lot 143 dan tidak ada bukti pembayaran untuk Lot 142 walaupun ia telah diplidkan (lihat perenggan 30).

(4) Oleh kerana mahkamah telah mendapati bahawa tidak ada isu yang dibicarakan dibangkitkan oleh plaintif, itu adalah kes yang jelas dan nyata di mana pembatalan berdasarkan A 18 k 19 Kaedah-Kaedah Mahkamah 2012 seharusnya dibenarkan (lihat perenggan 32).]

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (folld)

Legislation referred to

Rules of Court 2012 O 18 r 19

R Aswath (Ahmad Deniel, Ruben & Co) for the plaintiff.
MK Ganesan (MK Ganeson & Assoc) for the defendant.

See Mee Chun J:

INTRODUCTION

[1] The plaintiff had filed a claim against the defendant for the payment of RM7,063,376 and a declaration that 600 shares in a company SSE Marine Sdn Bhd is held by the defendant as a trustee.

[2] The amount claimed consists of payments made to the defendant of RM3,526,712 for the purchase of a piece of land, Lot 142, and RM3,536,664 for Lot 143 as well as consultation fees. According to the plaintiff, there was misrepresentation and breach of contract when the defendant represented to the plaintiff that Lots 142 and 143 were suitable for use as a shipyard and had to be converted and/or rezoned from agricultural land to industrial land. The lands were to be purchased by the defendant first who would undertake the conversion exercise and then sell to the plaintiff.

THE DEFENDANT'S APPLICATION TO STRIKE OUT — ENCLOSURE 15

[3] The defendant's application to strike out was supported by its affidavit in support in encl 16.

Lot 143

[4] In relation to Lot 143 it was averred that it was bought by one SSE Marine Sdn Bhd ('SSE Marine') from Nash Bhullar ('Nash') for RM1m and there was a company resolution dated 10 September 2015 to this effect. Out of the four directors in SSE Marine, one of which includes the defendant, the other three are directors in the plaintiff company (para 6(A) and exh NK1).

[5] SSE Marine paid to Nash through his solicitor Tetuan Shujaa Mazri & Co (para 6B(ii) and the relevant documents on payment and sale and purchase agreement as exh NK3).

[6] The payments as shown in para 23 of the statement of claim (items 1–7 and 10–18) were made by SSE Marine, SSE Asia Pacific Pte Ltd and not by the plaintiff and item 4 by SSE Marine to one Tayan Maju Jaya.

[7] There was therefore no such representation or guarantee made to the plaintiff on defendant purchasing Lot 143, converting the use and then reselling to the plaintiff ('para 6(B)(iv)').

Lot 142

[8] In relation to Lot 142 it was averred there was an option to purchase ('OTP') dated 23 December 2014 between parties for the defendant to buy the land and then sell to plaintiff ('para 7(i) and exh NK4'). It was further stated there is no term in the OTP for the defendant to change or rezone the land. It was for the plaintiff to liase and obtain approval from relevant government departments failing which the OTP can be terminated, which was what happened.

[9] The payments referred to in para 17 of the statement claim of items 9, 13–15, 17–18, 21–22 and 25–26 were by third party companies and not for the purchase of Lot 142.

600 ordinary shares in SSE Marine

[10] This issue was dealt with in para 8 of the affidavit in support. The defendant denied the plaintiff's allegation that the 600 ordinary shares ('shares') in SSE Marine were given to him to buy and rezone Lot 143 and that he did not buy the shares. On the contrary he was invited by the three directors of the plaintiff to be director in SSE Marine as they wanted a Malaysian. He purchased the shares for the price of RM600 with a value of RM1 per share which was registered in 13 August 2015 ('relevant documents in NK5').

[11] Further, the plaintiff had no right to claim against him for the shares held in SSE Marine.

THE PLAINTIFF'S AFFIDAVIT IN REPLY — ENCLOSURE 29

Lot 143

[12] With regard to Lot 143, it was averred in paras 7 and 8 that the payments were issued by the plaintiff and its related companies to the defendant. Exhibit IFD1 are copies of payment vouchers and cheques issued to the defendant. The plaintiff had provided funds to SSE Marine for the purchase.

[13] It was further averred in para 12 that the RM1m was received by the defendant personally. It was not disputed the cheque was issued by SSE Marine but the funds came from the plaintiff.

[14] In paras 13.1 and 13.3 it was stated the plaintiff is a family owned business founded in 1968 and that it had various subsidiary/related companies and these included SSE Asia Pacific Pte Ltd (in Singapore) and SSE Marine (in

Malaysia). The director and shareholders in these companies are the same as the plaintiff and payments issued by them for the purchase of Lot 143 were from the plaintiff's funds.

[15] The purchase price was RM4m after conversion of the land. There was indeed a representation that the defendant will first purchase Lot 143 and sell to the plaintiff for RM4m.

Lot 142

[16] The existence of the OTP was not disputed ('para 16'). There was a sale and purchase agreement dated 1 January 2015 between the defendant and one Ranjeet Singh Bhullar ('Ranjeet') for the purchase price of RM570,000 (exh IFD2). Prior to the purchase the defendant had warranted and represented to the plaintiff on conversion of the land leading the plaintiff to purchase for RM3m. As the defendant had originally purchased for RM570,000 and the price now being RM3m, this would show there was an agreement to resell after conversion. The price was subsequently increased to RM3.6m due to increased costs of conversion. The plaintiff had paid RM3,526,712. Refer to paras 17.1 to 17.6.

The shares

[17] It was averred in para 18 that exh NK5 was not conclusive proof of purchase but that the shares were allotted to the defendant. There was also no proof of contribution in purchasing the shares (para 19).

Triable issues

[18] The triable issues put forth are as stated in para 21.

THE DEFENDANT'S AFFIDAVIT IN REPLY — ENCLOSURE 38

[19] The defendant essentially stated the plaintiff's affidavit were denials and in contradiction of the facts and that the triable issues were an afterthought.

ANALYSIS

[20] The triable issues raised by the plaintiff in its para 21, encl 29 were as follows:

(i) whether the shares held by the defendant in SSE Marine is a resulting trust;

(ii) whether the defendant had undertook and/or agreed to purchase, apply and convert and/or re-zone the lands from agricultural lands to industrial lands for use as shipyard and subsequently agreed to sell to the plaintiff as converted and/or re-zoned lands;

(iii) whether in reliance on the truth of the representations and warranties made by the defendant, the plaintiff had paid the defendant the agreed purchase price of the re-zoned lands;

(iv) whether the funds to purchase Lots 142 and 143 originated from the plaintiff and that the defendant had received the payments from the plaintiff to purchase the lots; and

(v) discrepancies in money paid to the defendant for the purchase of Lot 142 based on the OTP and the original purchase price in the sale and purchase agreement dated 1 January 2015.

(i) Whether the shares held by the defendant in SSE Marine is a resulting trust

[21] This issue was a non starter as SSE Marine and the plaintiff are different entities (even if as contended they are related companies) such that the plaintiff has no locus to seek such a declaration.

[22] In any event exh NK3 read as a whole and in particular page 2 would show the defendant had purchased the shares. The aforesaid page read as follows:

> We wish to inform you that we have received a total amount of Ringgit Malaysia Nine Hundred Ninety Seven (RM997.00) only being application for 997 shares of RM1.00 each in the Company from the following persons:
>
> Cash Shares: Share Alloted
>
> Name of Allottees 600
>
> NAGALINGAM A/L KALIMUTHU
>
> ...

[23] There was also a letter of consent from the defendant to take up the shares and a director's resolution to confirm the shares allotted to the defendant, all dated 13 August 2015.

(ii) Whether there was a representation from the defendant to purchase, convert and then sell to the plaintiff such that the plaintiff paid for Lots 142 and 143 on the basis of that representation

[24] The court was of the opinion there was no such representation made on the basis of the sale and purchase agreement for Lot 143 ('S&P') between SSE Marine Sdn Bhd and Nash and the OTP for Lot 142.

[25] For Lot 143 the S&P in NK1 clearly showed the transaction between parties who were not the defendant. There was a company resolution authorising the purchase. Nash sold to SSE Marine Sdn Bhd and RM1m was paid to Nash through his solicitor. There was an acknowledgement by the solicitor in exh NK1, p 2. It was not denied the cheque was issued by SSE Marine but the plaintiff said it came from its funds. There was no proof of that other then an averment SSE Marine was its related company.

[26] On the RM1m received by the defendant, the cheque would show issuance to Tetuan Shujuaa Mazri & Co and exh NK5 would show the defendant was a majority shareholder in SSE Marine. Exhibit NK1 is the corporate information on SSE Marine and shows the same.

[27] On the other payments made to the defendant, these were mainly by SSE Asia Pacific Pte Ltd which the plaintiff said was its related company and the funds came from the plaintiff. Attached to the payment were payment vouchers which either stated payment for Lot 143 or payment on behalf of SSE Marine with the cheque issued by the plaintiff. Such payments cannot however negate the S&P of RM1m for the sale and purchase of Lot 143 between SSE Marine and Nash.

[28] With regard to Lot 142, what the plaintiff is relying on is the price difference between the OTP ('which was RM3m') and the sale and purchase agreement ('S&P') between the defendant and Ranjeet for RM570,000. This therefore showed there must be an agreement between the plaintiff and defendant for the defendant to resell after conversion. This contention cannot possibly hold as the OTP was just that, an option to purchase and where there was never any term for the defendant to rezone or convert the land. On the contrary cl 3.3 stated the sale and purchase was subject to satisfactory replies being received by the plaintiff from the usual government departments and authorities. The plaintiff had pleaded in para 17 of its statement of claim to payments made to the defendant but these were never referred to its affidavit in reply in encl 29.

[29] This also effectively deals with issue (v) raised by the plaintiff on the price discrepancy between the OTP and the S&P between the defendant and Ranjeet.

(iii) Whether the purchase funds came from the plaintiff

[30] This has been dealt with where the court has found it was SSE Marine that purchased Lot 143 and there was no evidence of payment for Lot 142 despite it having been pleaded.

(iv) Discrepancy in money paid to the defendant based on OTP and S&P between the defendant and Ranjeet

[31] This has been dealt with under issue (ii) in relation to Lot 142.

FINDING

[32] As the court found no triable issues as raised by the plaintiff, this was a plain and obvious case whereby striking out pursuant to O 18 r 19 of the Rules of Court 2012 was warranted, as per *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36.

CONCLUSION

[33] For the above reasons, the defendant's application to strike out was allowed.

Plaintiff's claim dismissed and defendant's application to strike out plaintiff's claim allowed.

Reported by Mohd Kamarul Anwar